

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FRN: 0003-4622-31

¹ 47 C.F.R. §§ 1.903(a) and 90.425(a).

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4. During further investigation, the agents found that Horizon had relocated stations WPMT622 and WPM811 to the Cadman Towers, 101 Clark Street, Manhattan, New York to provide radio communication service for Eastland Car Service on the frequency 452.725 MHz and Lower Eastside Car Service on the frequency 462.200 MHz. At the time of the investigation, Horizon was only authorized to operate station WPMT622 on the frequency 462.200 MHz at 1500 Palisade Avenue, Fort Lee, New Jersey and station WPM811 on the frequency 452.725 MHz at 195 First Street, Newark, New Jersey.

5. On July 29, 2002 between 10:45 a.m. and 11:50 a.m., the FCC agents monitored the radio transmissions on the frequencies 462.200 MHz and 452.725 MHz. During that period, Horizon failed to transmit the call sign identification WPMT622 for the 462.200 MHz station and the call sign identification WPM811 for the 452.725 MHz station. Employees of Eastland Car Service and Lower Eastside Car Service confirmed that the call sign identification was not transmitted by the stations.

6. On August 5, 2002, the Philadelphia Office issued a Notice of Violation to Horizon for operating stations WPMT622 and WPM811 at an unauthorized location, in violation of Section 1.903(a) of the Rules, and for failure to transmit call sign identification for stations WPM811 and WPMT622, in violation of Section 90.425(a) of the Rules.

III. DISCUSSION

7. By letter dated August 14, 2002, Horizon submitted a response to the Notice of Violation with the Philadelphia Office. In the response, Horizon stated that it was applying for authorization from the Commission for Eastland Car Service's operation on the frequency 452.725 MHz and Lower Eastside Car Service's operation on the frequency 462.200 MHz. Horizon also agreed to take corrective actions to transmit the call sign identification on the radio transmitting equipment of Lower Eastside Car Service and Eastland Car Service.

8. Based on the evidence before us, we find that Horizon willfully² and repeatedly³ violated Section 1.903(a) of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁴ sets the base forfeiture amount for Horizon's operation of each station at an unauthorized location at \$4,000 and for its failure to transmit the call sign identification on each station at \$1,000. In assessing the monetary forfeiture amount, we must take into account the

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

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statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁵ (the “Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Horizon is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for its operation of stations WPMT622 and WPMM811 at an unauthorized location and its failure to transmit the call sign identification on stations WPMT622 and WPMM811.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Horizon SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400002 and FRN: 0003-4622-31.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400002 and FRN: 0003-4622-31.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁵ 47 U.S.C § 503(b)(2)(D).

⁶ 47 U.S.C § 503(b).

⁷ 47 C.F.R. §§ 0.111 and 0.311.

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14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Horizon Communications, P.O. Box 387, Cliffside Park, New Jersey 07010.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

⁸ See 47 C.F.R. § 1.1914.